

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.692 of 2007
BABER ALI @ BABER MIAN
Versus
THE STATE OF BIHAR & ORS

3 17.9.2008

In the instant writ petition the petitioner confined his prayer for amalgamation of two F.I.Rs namely Siwan Mufassil P.S.Case No.56 of 2007 and Siwan Mufassil P.S.Case No.57 of 2007.

The prosecution case in short is that on 20.3.2007 some unruly incident took place in Siwan Jail. One Vikash Singh, one of the inmates of the jail, lodged a F.I.R. on 20.3.2007, stating therein that one Birendra Singh came and informed him that Md.Shahbuddin, M.P. is calling him. The informant did not heed to the aforesaid request. As a consequence five minutes thereafter a number of accused persons numbering 40-50 came and caught the informant as well as Lohar Manjhi and Sanjay Kushwaha and began to drag them. On protest, when the ward police tried to intervene the accused persons started throwing bricks on them as a result of which some of them sustained injuries. The cause of the occurrence was on account of the fact that it was suspected that the informant and his associates had murdered one Ishhaque Mian and as such the accused persons were forcibly taking the informant and others, where Md. Shahbuddin, M.P. was lodged. The aforesaid report of Vikash Singh gave rise to Siwan Mufasil P.S. Case No.56 of 2007, under sections 147, 342, 323, 337 and 307 of the Penal Code.

Incidentally for the same offence, another F.I.R. was also lodged by the Jail Superintendent on 20.3.2007, giving rise to Siwan

Mufassil P.S.Case No.57 of 2007 registered under sections 147, 337 and 353 of the Penal Code.

In the aforesaid written report to the Siwan Mufassil P.S.Case No.57 of 2007, the informant Jail Superintendent alleged that about 1 P.M., he heard alarm inside the jail and saw 40-50 accused persons including those who are named in the earlier F.I.R. namely Siwan Mufassil P.S. Case No.56 of 2007, were forcibly dragging Vikash Kumar, Lohar Manjhi and Sanjeev Kumar. In the meantime, many prisoners and Jail Wardens tried to intervene and control the situation. It was alleged that the miscreants were pelting stones on them. The aforesaid report of Jail Superintendent gave rise to Siwan Mufasil P.S. Case No.57 of 2007 under sections 147, 337 and 353 of the Penal Code.

Learned counsel for the petitioner submits that both the F.I.R. relates to the same incident. Further more the time and place of occurrence of both the incidents are the same.

On the other hand, learned counsel for the State submits that the first F.I.R. was lodged by one Vikash Singh, whereas the subsequent F.I.R. was lodged by the Jail Superintendent in discharge of his official duty.

On perusal of both the F.I.Rs it transpired that both relates to the same incident which occurred in the jail premises of Siwan Jail. Both the F.I.R.s speaks about forceful dragging of the informant and his other associates, as well as pelting of stones and assault on those including Jail Wardens, who tried to intervene. The accused persons

named in both the F.I.Rs are almost the same. Both the F.I.Rs speak that the accused persons not only forcefully dragged the informant Vikash Singh and others, but they also pelted stones when there was a protest from other prisoners and Jail Wardens. The second F.I.R. has been lodged for substantially the same offence, which is fully covered by first F.I.R.

On perusal of the two F.I.Rs, this court is of the view that the same has been lodged in respect of the same incident occurring in the same transaction in the jail premises. The place of occurrence, time of the occurrence, the manner of occurrence and the offences mentioned in Siwan Mufassil P.S. Case No.57/2007 is not distinct from the offence mentioned in Siwan Mufassil P.S. Case No.56/2007. Thus, this court finds that the case of the petitioner is squarely covered by a decision of the Hon'ble Apex Court in the case of A.T.Anthony Vs State of Kerala, 2001 SC 2637.

In this view of the matter, the police erred in instituting the F.I.R. being Siwan Mufassil P.S. Case No.57/2007. The written report of the Jail Superintendent, Siwan giving rise to the aforesaid case can be used as material in Siwan Mufassil P.S. Case No.56/2007. The materials collected in course of investigation of Siwan Mufassil P.S. Case No.57/2007, would be incorporated in Siwan Mufassil P.S. Case No.56/2007 and no separate case would proceed on the basis of Siwan Mufassil P.S. Case No.57/2007 registered under sections 147, 337 and 353 of the Penal Code, as it would hit by section 162 of Cr.P.C.

For the reasons stated above, the second F.I.R. being Siwan Mufassil P.S. Case No.57/2007 registered under sections 147, 337 and 353 of the Penal Code would not have a distinct identity and materials collected therein stands amalgamated with Siwan Mufassil P.S. Case No.56 of 2007 registered under sections 147, 342, 323, 337 and 307 of the Penal Code. The second F.I.R. would be treated as mere statement of the informant of that case in Siwan Mufassil P.S. Case No.56 of 2007.

In the result, this writ petition stands allowed.

KHAN

(S.P.Singh,J)

